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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 09/963,737  | 09/26/2001  | Eric Levy-Abegnoli   | FR920000040US1      | 9268             |
| 45503   | 7590        | 03/10/2005           | EXAMINER            |                  |
| DILLON & YUDELL LLP<br>8911 N. CAPITAL OF TEXAS HWY.,<br>SUITE 2110<br>AUSTIN, TX 78759 |             |                      | LIN, KELVIN Y       |                  |
|   |             |                      | ART UNIT            | PAPER NUMBER     |
|   |             |                      | 2142                |                  |

DATE MAILED: 03/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                                      |   |  |
|------------------------------|--------------------------------------|---|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>09/963,737 | <b>Applicant(s)</b><br>LEVY-ABEGNOLI ET AL. |  |
|                              | <b>Examiner</b><br>Kelvin Lin        | <b>Art Unit</b><br>2142                     |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 06 January 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 21-32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 21-32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☒ Certified copies of the priority documents have been received in Application No. 00480087.6.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

***Detailed Action***

**Response to Amended Claims**

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

Claims 26, and 27 are missing. Therefore claims 28-34 have been renumbered to 26-32.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

1. Claims 21-32 are rejected under 35 USC 102(e) as being anticipated by Adelman et al., (US Patent No. 6078957).
2. Regarding claim 1, Adelman teaches a method of load balancing connections between a plurality of servers and a plurality of clients, wherein a plurality of load balancers couple said plurality of servers and said plurality of clients, said method comprising:
  - in response to a receiving load balancer out of said plurality of load balancers receiving a communication from at least one of said plurality of clients, determining a primary load balancer and a backup load balancer for handling said communication (Adelman, col.6, l.54-58, col.7, l.40-41);

- storing an identity of said primary load balancer and said backup load balancer corresponding to said communication in each of said plurality of load balancers (Adelman, col.7, l.50-56, l.67);
- forwarding said communication to said primary load balancer for transmission to at least one of said plurality of servers (Adelman, col.9, l.27-30); and
- in response to determining said primary load balancer is not available, forwarding said communication to said determined backup load balancer for transmission to at least one of said plurality of servers (Adelman, col.6, l. 62-67, col.7, l.3-4, col.9, l.17-20).

3. Regarding claim 22, Adelman further discloses the method of Claim 21, wherein said determining further includes:

- calculating a plurality of scores, wherein each of said plurality of scores corresponds to a respective one of said plurality of load balancers (Adelman, col.8, l.40-43);
- ranking said plurality of scores from a highest score to a lowest score (Adelman, col.8, l.40);
- designating as said primary load balancer one of said plurality of load balancers corresponding to said highest score (Adelman, col.8, l.9-13); and

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- designating as said backup load balancer one of said plurality of load balancers corresponding to a second highest score (Adelman, col.8, l.40-43).

4. Regarding claim 23, Adelman further discloses the method of Claim 21, further comprising: in response to determining said receiving load balancer is said primary load balancer, transmitting said communication to at least one of said plurality of servers (Adelman, col.9, l.27-30).

5. Regarding claims 24-26 have similar limitation as claims 21-23.  
Therefore, claims 24-26 are rejected under Adelman for the same reason set forth in the rejection of claims 21-23.

6. Regarding claims 27-29 have similar limitation as claims 21-23.  
Therefore, claims 27-29 are rejected under Adelman for the same reason set forth in the rejection of claims 21-23.

7. Regarding claims 30-32 have similar limitation as claims 21-23.  
Therefore, claims 30-32 are rejected under Adelman for the same reason set forth in the rejection of claims 21-23.

***Response to Remarks***

8. Application's argue with respect to claims 21-32 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MEPE 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37CFR 1.136(a).

A shortened statutory period for reply to this inal action is set to expire THREE MONTHS from the mailing date of this action. In the event a first replay is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE MONTH shortened statutory period, then the shortened statutory period will expire on the date advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTH from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kelvin Lin whose telephone number is 703-605-1726. The examiner can normally be reached on Flexible 4/9/5.

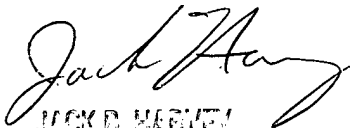
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jack Harvey can be reached on 703-305-9705. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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JACK D. HAGERTY  
SUPERVISOR, PATENT EXAMINER